IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4168 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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AMRELI DISTRICT PANCHAYAT - Petitioner(s)

Versus

SHARDABEN ARJUNBHAI HAYANI - Respondent(s)

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Appearance :
Shri H. S. Munshaw for Petitioner(s).
None for the Respondent though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/08/2007

ORAL JUDGMENT

The petitioner, Amreli District Panchayat, being aggrieved by the award dated 24th September, 1999 passed by the learned Labour

Court, Amreli in Reference Case No.133/1990 (Old Reference Case No.180/1993 – Bhavnagar; Present Reference Case No.104/1998 – Amreli), has come to this Court with a submission that the learned Court below was unjustified in directing reinstatement of the workman and also erred in awarding 20% back-wages, without there being any justifiable cause.

2. From the records, it appears that after appreciating the oral and documentary evidence filed by the workman, the learned Labour Court came to the conclusion that the workman had worked for 240 or more days in twelve calendar months preceding the date of her removal and as the removal was in breach of Section 25-F of the Industrial Disputes Act, 1947, she was entitled to reinstatement. The present petitioner, which is a Municipality and is required to maintain the records relating to the appointment, termination, payment of salary, etc., did not produce any documentary evidence to prove that the workman did not work for 240 or more days. As the finding recorded by the learned Labour Court is based upon the evidence and cannot be termed as perverse, the petitioner now would not be entitled to say that the findings recorded by the learned Court below are bad.

3. So far as the back-wages are concerned, in the opinion of this Court, the learned Court below has already shown extra

grace/clemency in favour of the petitioner by awarding only 20% back-wages to the workman. It was then contended that from the ration card issued by the Mamlatdar, it would clearly appear that on 5th August, 1996, the workman was almost around 60 years and therefore, in 1999, the order of reinstatement could not be made. Undisputedly, these documents were not produced before the learned Labour Court. It was then contended that the respondent-workman had filed her birth certificate before the learned Court below and the learned Court below has not considered the same. It is not known to me, nor it is known to Shri Munshaw, learned Counsel for the petitioner, that what are the contents of the said birth certificate. We do not know that on the date when the award was made, whether the workman was below 60 years or not. On merits, I do not find anything in the matter and therefore, I refuse to interfere in the matter, but, however, I would give liberty to the petitioner to make an inquiry on the basis of the said birth certificate and if, according to the said birth certificate, the workman, before the date of the award or after the date of the award, has attained the age of superannuation, then, from the said date, the petitioner would be entitled to snap the contract of services. It is, however, made clear that under the orders of the learned Labour Court, the petitioner would be entitled to reinstate the workman first, pay the back-wages and only thereafter, it would be entitled to make the inquiry. The inquiry shall be made after giving due opportunity of hearing to the workman.

4. Accordingly, the petition stands disposed of. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**